

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00 DODE-00

DOT-00 INR-07 NSAE-00 FAA-00 L-03 SS-15 NSC-05

TRSE-00 /052 W

----- 053581

R 301653Z SEP 75

FM AMEMBASSY LONDON

TO SECSTATE WASHDC 5192

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJ: CIVAIR - PAN AM COMMISSION RATES

REF: STATE 216469

1. AS REQUESTED REFTEL, EMBASSY CAA SENT LETTER TO GEORGE ROGERS, UNDER SECRETARY, DEPT. OF TRADE, SETTING FORTH USG POSITION ON PANAM COMMISSION PROBLEM. WE HAVE JUST RECEIVED FOLLOWING REPLY DATED SEPT. 25:

BEGIN QUOTE: I WAS DISAPPOINTED TO RECEIVE YOUR LETTER OF 17 SEPTEMBER.

AT THE END OF OUR MEETING IN MAY, TOM ENDERS AND I ISSUED A JOINT STATEMENT WHICH MADE IT PLAIN THAT OUR TWO GOVERNMENTS WERE AGREED BOTH UPON THE OBJECTIVES TO BE PURSUED AND UPON THE STEPS TO BE TAKEN TO ACHIEVE THEM. AT OUR MEETING WITH KNUT HAMMARSKJOLD IN PARIS ON 28 MAY, WE AGAIN FOUND OURSELVES IN HARMONY. YOUR OWN ADMINISTRATION DID, I UNDERSTAND, URGE PAN AM TO TAKE THE ACTIONS ON WHICH TOM ENDERS AND I HAD AGREED - BUT UNFORTUNATELY WITHOUT SUCCESS.

AT MY FURTHER TALKS WITH TOM ENDERS AND RAY WALDMANN IN AUGUST, THE AREAS OF AGREEMENT WERE AGAIN MUCH GREATER THAN THE AREAS OF DISAGREEMENT. I PUT FORWARD SUGGESTIONS FOR DEALING WITH THE LATTER (I WILL COME

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BACK TO THIS LATER) AND HAD HOPED, AS BEFORE, TO AGREE

A JOINT RECORD. BUT UNFORTUNATELY, TIME DID NOT PERMIT.

IN THESE CIRCUMSTANCES, I AM AFRAID I DO NOT FIND IT AT ALL USEFUL TO PICK OUT THE FEW POINTS ON WHICH WE WERE IN DISAGREEMENT AND MAKE THEM A TOPIC FOR CORRESPONDENCE. HOWEVER, SINCE YOU HAVE DONE SO I AM OBLIGED TO FOLLOW YOUR BAD EXAMPLE. BRIEFLY, THE ANSWERS ARE:

- A. IN SEEKING TO CONTROL THE RATE OF COMMISSION PAID IN RESPECT OF TRAVEL TO AND FROM THE UNITED KINGDOM AND ITS TERRITORIES, WE ARE NOT CLAIMING ANY EXTRATERRITORIAL JURISDICTION. THIS VIEW WAS EXPLICITLY ENDORSED BY THE COURT OF APPEAL'S UNANIMOUS JUDGMENT ON 29 JULY. I EXPECT YOU WILL BY NOW HAVE READ THE TEXT, WHICH CONTAINS THE UNEQUIVOCAL STATEMENT THAT "...SUCH A CONDITION WOULD NOT HAVE EXTRATERRITORIAL EFFECT. IT WOULD HAVE INTRATERRITORIAL EFFECT." AND "THERE IS NOTHING EXTRATERRITORIAL ABOUT IT."
- B. OUR ATTITUDE ON COMMISSION RATES IS NO DIFFERENT FROM YOUR OWN AUTHORITIES' ATTITUDE ON THE MUCH MORE IMPORTANT QUESTION OF FARES. IF IT WERE TRUE THAT WE WERE CLAIMING EXTRATERRITORIAL JURISDICTION, THE SAME WOULD BE TRUE OF THE UNITED STATES.
- C. THE PROBLEMS OF ENFORCEMENT WHICH YOU MENTION APPLY NO LESS TO FARES THAN TO COMMISSION RATES.
- D. IT DOES NOT FOLLOW, AS YOU SUGGEST, THAT IF OUR VIEW WAS ACCEPTED AIRLINES MIGHT HAVE TO COMPLY WITH OVER 100 CONFLICTING REGULATIONS AT ONCE. TOM ENDERS HIMSELF CONFIRMED THAT THE US, LIKE THE UK, WAS IN FAVOUR OF STABLE COMMISSION RATES AND HOPED THAT IATA WOULD SOON REACH A UNANIMOUS AGREEMENT. HE ACCEPTED THAT, MEANTIME, ALTHOUGH PAN AM'S REPEATED VETO HAD PREVENTED IATA FROM REACHING THE INTERIM AGREEMENT

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MENT FOR WHICH HE AND I HAD HOPED, THE SEVEN AND A HALF PERCENT LEVEL HAD BECOME ACCEPTED AS A DE FACTO INTERIM RATE IN MANY PARTS OF THE WORLD.

- E. WE NEITHER WISH TO DISCRIMINATE AGAINST PAN AM NOR HAVE WE DONE SO. IT WAS THEY WHO STARTED THE "COMMISSION WAR" LAST APRIL. IT WAS THEIR

UNWILLINGNESS TO STOP, AND THEIR CHALLENGE OF
OUR POWERS, THAT OBLIGED US TO TAKE THE NECES-
SARY STEPS.

F. I AM SORRY TO SEE YOU REPEATING PAN AM'S CLAIM

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FM AMEMBASSY LONDON

TO SECSTATE WASHDC 5193

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THAT THEY MERELY "BROUGHT THE PROBLEM OUT INTO
THE OPEN." AT THE MEETING IN AUGUST, TOM
ENDERS AGREED THAT THEY HAD A "CREDIBILITY
PROBLEM" NOT ONLY OVER THIS CONTENTION BUT
ALSO OVER THE WHOLE OF THEIR CONDUCT OF THIS
AFFAIR SINCE APRIL.

MAY I NOW TURN BACK TO THE POSITIVE SIDE? BOTH
GOVERNMENTS AGREE ON THE DESIRABILITY OF ESTABLISHING
AND ENFORCING FAIR AND REASONABLE FARES AND COMMISSION
RATES. I WOULD LIKE TO CONCENTRATE DISCUSSION ON THE
POSITIVE ASPECTS OF OUR COLLABORATION OVER THIS, RATHER
THAN ON THE RELATIVELY MINOR POINTS OF DISAGREEMENT.

TO THE EXTENT THAT THERE IS DISAGREEMENT, IT HINGES
ON THE TEXT OF SECTION II OF THE ANNEX TO THE BERMUDA

AGREEMENT. FOR MANY YEARS WE HAVE HAD AN AGREED INTER-
PRETATION OF THAT TEXT; BUT NOW THAT A DIFFERENCE OF
VIEW HAS EMERGED IT SHOULD BE SETTLED QUICKLY. AT MY
MEETING WITH TOM ENDERS IN AUGUST, I SUGGESTED EITHER

I. THE NEGOTIATION OF A REVISED TEXT TO MAKE THE
POSITION PLAIN; (BOTH YOUR CURRENT STANDARD
ASA TEXT AND OURS CONTAINS AN EXPLICIT REFER-
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ENCE TO COMMISSION RATES); OR

II. SUBMISSION OF THE MATTER TO ARBITRATION AS
PROVIDED FOR IN THE AGREEMENT.

AT OUR NEXT ROUND OF CONSULTATIONS, WHICH IS CURRENTLY
BEING PLANNED FOR THE END OF NEXT MONTH, THE RESOLUTION
OF THIS DIFFERENCE WILL BE HIGH ON OUR AGENDA. I HOPE
YOUR DELEGATION WILL COME PREPARED EITHER TO AGREE TO
ONE OR OTHER OF THE ABOVE PROPOSALS OR TO PUT FORWARD
CONSTRUCTIVE PROPOSALS OF THEIR OWN FOR REMOVING THIS
IRRITANT FROM OUR BILATERAL RELATIONS.

I AM COPYING THIS REPLY TO ADRIAN BUXTON. END
QUOTE. (BUXTON WAS COPIED ON OUR LETTER TO ROGERS. HE
IS HEAD OF MARINE AND TRANSPORT DEPT., FCO.)

2. WOULD APPRECIATE HEARING WHETHER DEPT. HAS MADE ANY
DECISION WITH RESPECT TO ARBITRATION PROPOSAL.
RICHARDSON

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